

## MINUTES OF THE SPECIAL MEETING OF MARCH 19, 2015

A special meeting of the Sussex County Planning and Zoning Commission was held Thursday afternoon, March 19, 2015 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to Order with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Rodney Smith, Mr. I.G. Burton, III, Mr. Michael Johnson, Mr. Martin Ross with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Ms. Janelle Cornwell – Planning and Zoning Manager, and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the agenda as circulated. Motion carried 5 – 0.

### OTHER BUSINESS

#### **The Resort at Massey's Landing CU #1963 Site Plan – Long Neck Road**

Mr. Abbott advised the Commission that this is the preliminary site plan for a 291 unit campground located on 50.83 acres; that this conditional use was approved on December 9, 2014 with 24 conditions of approval; that the conditions are noted and depicted on the site plan; that 216 sites are for recreational vehicles, 70 for park models and there are 5 tent sites; that each RV and park model lot contains a minimum of 2,000 square feet; that the 5 tent spaces contain 10,890 square feet total; that the park facilities include a propane charging station, a pavilion, an aquatic and golf cart rental center, a concierge, temporary parking for RV check in, a general store, a welcome center with administrative offices, a swimming pool, a café and snack bar, 5 bathhouses, a nature center and activities lodge, a lodge meeting center, a conference and retreat center, a beach lounge bbq and café bar, a dog care center, a DART bus stop, 2 interior crabbing and fishing piers and a dog park; that sewer will be provided by Sussex County through the Long Neck Sanitary Sewer District; that water will be provided by the Long Neck Water Company; that the wetlands and appropriate statement and flood zone areas need to be provided on the final site plan; that the Commission was previously provided a copy of the preliminary site plan, proposed park rules and regulations, and a letter explaining how condition number 17 was determined.

Mr. Johnson questioned the number of lots originally applied for when the application was submitted.

James Fuqua, Attorney representing the applicants, advised the Commission that when the application was filed, 322 total lots were requested and that the County Council reduced the number of lots permitted.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the site plan as a preliminary. Motion carried 5 – 0.

## **Showfield Subdivision**

### **Revised Preliminary Concept/Multi Modal Path**

Mr. Abbott advised the Commission that this is a revised conceptual plan for a portion of the Junction and Breakwater Trail to be located on a portion of the Showfield subdivision; that the trail was originally approved to be located on the adjoining Breakwater MR/RPC and was shown as a proposed trail by others on the approved plan; that the residents of the Breakwater development filed a suit against DelDOT; that the developers of Showfield have provided the area needed for the trail to be located on their property; that the Showfield development was approved on August 7, 2014 with 16 conditions of approval; that Condition D states that all entrances and roadway improvements shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established, The location of the school bus stop shall be coordinated with the local school district; that Condition G requires a 20 foot forested buffer along all boundaries of the subdivision; that the proposed trail is part of DelDOT's requirements; that in the area where the trail meets Gills Neck Road, there was an entrance into the Showfield subdivision; that the proposed entrance will be removed for the trail and a portion of the interior subdivision street will now be a cul-de-sac; that an existing hedgerow will remain along the boundary of this site and the adjoining Breakwater development; that trees are proposed to be planted on the Showfield side of the proposed trail; and that the Commission was previously provided a copy of a portion of the revised plan and a letter from DelDOT explaining and supporting the request.

Mr. Johnson advised the Commission that this will provide for the completion of the bike trail; that it is appropriate to provide accommodations for bicycle and pedestrian travel; that the proposed trail is in the public's best interest; and that the proposed trail is a part of DelDOT's approval process.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the plan as a revised preliminary to allow for the trail and to grant a waiver from the forested buffer requirements for the section of the development where the trail will be located. Motion carried 5 – 0.

## **Coastal Club MR/RPC**

### **Preliminary Site Plan Land Bay 5 Road 285**

Mr. Abbott advised the Commission that this item was deferred at the January 8, 2015 meeting; that Mr. Johnson expressed concerns about setbacks being revised, future RPC's consideration for setbacks, safety and fire concerns, impervious areas, density, and wanted the full Commission's participation; that this is the preliminary site plan for the Land Bay 5 section of this RPC; that 51 single family lots are proposed; that the preliminary plan is the same as the approved Master Plan that the Commission approved on March 24, 2011; that the proposed setbacks for this phase are 20 feet front yard, 8 feet side yards and 10 feet rear yard; that this is consistent with Phase 1; that the area is not impacted by a flood plain and there are no wetlands impacted; that Sussex County will provide central sewer and Tidewater Utilities will provide central water; that sidewalks are provided on both sides of all streets; that the site plan is suitable for preliminary approval; that since the project is a RPC, final site plan approval shall be subject

to the review and approval of the Commission upon receipt of all agency approvals; that the Commission was previously provided a copy of the site plan prior to the January 8, 2015 meeting; and that the Commission was previously provided a packet of information from the developer including a letter explaining the request, 2 letters from builders in the project supporting the request and 10 floor plans of different types of housing that can be built in this development.

Mr. Johnson advised the Commission that he has concerns about smaller setbacks; that smaller setbacks allow for larger dwellings to be built on smaller lots; that developers should lose density to accommodate larger homes; and that he did recommend approval for Phase 1 which has the same setbacks as proposed for this phase.

Mr. Robertson advised the Commission that the RPC section of the Zoning Code allows for flexibility and adjustments to setbacks based on land design and proposed architecture; and that there is not much criteria in applying that flexibility.

Mr. Smith questioned how many phases have been approved.

Mr. Abbott advised the Commission that this is the second phase of the project.

There was a consensus of the Commission that the proposed setbacks are consistent with Phase 1 and that it will make it easier for issuing building permits and inspections of the project.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried 4 votes to 1, with Mr. Smith opposed, to approve the site plan as a preliminary. Motion carried 4 – 1.

### **Saddle Ridge MR/RPC Preliminary Site Plan – Route 24**

Mr. Abbott advised the Commission that this item was deferred at the January 8, 2015 to allow the full Commission's participation; that this is a preliminary site plan for an 81 lot residential planned community; that this application (CZ #1742) was approved by the County Council on September 30, 2014 with 13 conditions of approval; that the conditions are noted or depicted on the site plan; that the layout/design is similar to the plan that was submitted during the public hearing process except that instead of single-family detached units, the units will now be fee simple single family lots; that the minimum lot size is 7,500 square feet; that the proposed setbacks are 20 feet front yards, 5 feet side yards and 20 feet rear yards; that all corner lots have 20 foot setbacks from both right of ways; that sidewalks are provided on both sides of all streets; that a pool, recreation facility, and 15 parking spaces are proposed; that Sussex County will provide central sewer and Tidewater Utilities will provide central water; that the site is not located in a flood zone; that there are no impacts to the wetlands; that the site plan is suitable for preliminary approval; that since the project is a residential planned community, final site plan approval shall be subject to the review and approval of the Commission upon receipt of all agency approvals; that the Commission was previously provided a copy of the preliminary site plan prior to the January 8, 2015 meeting and that the Commission was provided a copy of a letter from the developer's engineering firm detailing the request for lesser setback requirements.

Mr. Johnson advised the Commission that he has the same concerns for this project as the previous application and referenced the size of homes being built on smaller lots.

Mr. Robertson advised the Commission that this is a change from a condominium project to fee simple lots; and the Commission needs to determine if the change is enough to warrant a new application.

Mr. Lank advised the Commission that the project is a residential planned community and that there have been past projects that were revised from multi-family to single family without a hearing.

Frank Kea of Solutions, IPEM, advised the Commission that the original application was for groups of 3 to 4 homes within a building envelope and that there was 7 feet between the proposed homes; and that the smaller setbacks allow for more open space.

Mr. Abbott advised the Commission that decks located at the first floor level are permitted to encroach into the setbacks 5 feet provided they are open and unenclosed.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to deny the site plan as submitted. Motion carried 5 – 0.

#### **Peninsula Lakes MR/RPC Amended Setbacks – Road 299**

Mr. Abbott advised the Commission that this is a request to amend the side yard setbacks in this development; that the Commission granted a revised Master Plan approval for 588 single family lots and 72 duplex units on March 13, 2014; that the setbacks for the approved Master Plan are 20 feet front yards, and 10 feet side and rear yards; that the developers are requesting that the side yard setback be amended to 7.5 feet to allow for different types and sizes of homes; that no lots have been conveyed and no building permits have been issued; and that the Commission was previously provided a copy of a letter and drawing detailing the request.

Mr. Johnson advised the Commission that if developers want larger homes, they need to enlarge the lots; and that concessions have already been made.

Mr. Smith advised the Commission that the standard homes fits most of the standard lots; that the upgrade options need smaller setbacks such as wrap around porches.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to deny the request. Motion carried 5 – 0.

#### **Reserves at Lewes Landing Revised Site Plan – Route 9**

Mr. Abbott advised the Commission that this item was deferred at the January 22, 2015 meeting to allow for the full Commission's participation; that this is a request to revise the landscape

buffer along Route 9 in front of the waste water treatment disposal area from a vegetated buffer to installing a split 3 rail fence along this area; that one of the conditions of approval from March 25, 2004 required a vegetated buffer of Leyland Cypress or similar vegetation; that trees were planted along this area at one time but have since died or been removed; that since the condition originated with the Commission, the Commission may amend the condition if it so chooses; that the developer and homeowners' association are requesting the change since they feel that the roots of the trees would pose a problem for the adjacent treatment field; and that the Commission was previously provided a copy of a revised plan prior to the January 22, 2015 meeting.

Mr. Johnson advised the Commission that he has visited the site; that the development is about complete; that the homes are located away from Route 9; that Leyland Cypress trees are not conducive to the area; and that the fence would protect the treatment area and would not have any detrimental impacts on the community.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the request as submitted. Motion carried 5 – 0.

### **Water's Run Subdivision Request to Delete Sidewalks**

Mr. Abbott advised the Commission that this item was deferred at the January 22, 2015 meeting to allow for the full Commission's participation; that this is a request to delete a portion of the required setbacks within this development; that there was a condition of approval requiring sidewalks on both sides of all streets; that currently sidewalks have been installed along the entrance into the development and around Lots 11 through 20 and the amenity area; that if the request is approved, sidewalks would front all lots on one side with the exception of Lots 5 through 10 and Lots 25 through 35; that the Commission was previously provided a copy of the site plan prior to the January 22, 2015 meeting; and that the Commission was previously provided copies of a letter from the developer and a board member of the homeowners' association.

Mr. Smith advised the Commission that there have been problems with the lots and wetlands, that the DelDOT entrance has had to be replaced; that homes have been sold with no water service; that lots have been sold out of approved bonded areas; and that some homes have holding tanks for septic disposal.

Mr. Johnson advised the Commission that the reasons given pose more of a danger for pedestrians.

Motion by Mr. Smith, seconded by Mr. Ross, and carried and carried unanimously to defer action. Motion carried 5 – 0.

### **Canaan Woods Subdivision Request to Delete Sidewalks**

Mr. Abbott advised the Commission that this is a request to delete the condition requiring sidewalks on one side of all streets within this subdivision; that the Commission granted preliminary approval for this 99 lot standard subdivision (32,670 square foot lots) on January 14, 2009; that preliminary approval is valid until January 1, 206; that final approval has not been granted, therefore no lots have been conveyed or any construction commenced; that this request is due to market conditions and the rural nature of the subdivision; and that the Commission was previously provided a copy of a letter from the applicant's engineer detailing the request.

Mr. Burton questioned if the sidewalks were proffered by the applicants.

Mr. Johnson advised the Commission that the Commission has removed sidewalks from standard subdivisions in the past; that he still prefers sidewalks since they are safe for pedestrian travel; and that the current market conditions is not a valid reason for removing sidewalks.

Mr. Ross advised the Commission that sidewalks are not required by Code; and that no lots have been conveyed.

Mr. Lank advised the Commission that the applicants stated during the public hearing that sidewalks could be placed on one side of all streets.

Motion by Mr. Burton, seconded by Mr. Smith, and carried unanimously to approve this request. Motion carried 5 – 0.

### **Bay Forest Club MR/RPC**

#### **Preliminary Site Plan**

#### **Sub-Phases 4.3, 4.4 & 5.1 Sections R, T, U, V & X**

Mr. Abbott advised the Commission that this is a preliminary site plan for 144 units of an approved 892 unit residential planned community; that this area contains 27.74 acres of the project; that 59 single family lots, 21 cottages and 64 attached townhome villas are proposed; that the 64 townhome units are located within 17 buildings; that the buildings contain 3 and 4 units; that the proposed setbacks are consistent with the other approved phase of this project; that for single family lots the setbacks are 10 feet front and rear yards and 5 feet side yards; that the minimum lot size is 7,500 square feet; that for the townhome villas and cottages they are 20 foot front, rear and side yards; that there is a minimum 40 foot separation between buildings or groups of buildings for the cottages; that the minimum lot size for the townhomes is 1,600 square feet; that sewer will be provided by Sussex County and water will be provided by Tidewater Utilities; that sidewalks are provided on one side of all streets; that the conditions of approval for CZ #1526 and CZ #1741 are noted on the site plan; that if preliminary approval is granted, final approval shall be subject to the review and approval of the Commission upon receipt of all agency approvals since the project is a residential planned community; and that the Commission was previously provided a copy of the preliminary plan.

Mr. Johnson questioned if the 5 foot side setbacks are consistent with other phases in the project and was advised that they are.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the site plan as a preliminary. Motion carried 5 – 0.

**Brad and Caroline Hawkes**  
**CU #1844 Site Plan Road 329**

Mr. Abbott advised the Commission that this is a site plan for a storage facility located on 2.77 acres of land that is zoned AR-1; that this conditional use was approved on August 10, 2010 with 8 conditions; that approval is valid until January 1, 2016; that the conditions are noted or depicted on the site; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the preliminary plan.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

**Beach Bum Distilling**  
**CU #2002 Site Plan Road 266**

Mr. Abbott advised the Commission that this is a preliminary site plan for a distillery with tours, tasting and retail located on a 24,523 square foot parcel that is zoned C-1; that this conditional use was approved on December 16, 2014 with 7 conditions of approval; that the conditions are noted on the site plan; that the use will be located in an existing 7,991 square foot building; that sewer will be provided by Sussex County and water by Tidewater Utilities; that 20 total parking spaces are required under the mixed use section of the parking requirements and 23 spaces are proposed; that if preliminary approval is granted, final site plan approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

**Ocean Way Estates**  
**Additional Correspondence**

Mr. Robertson advised the Commission that on December 11, 2014 the Commission approved a concept to allow the developer to retain gated access to the subdivision streets in this development; that the Commission required an amended site plan to be submitted showing the existing location of the gates; that this item is the subject of a court proceeding that has been stayed; that this item is on the agenda for the purpose of providing additional correspondence that has been received from interested parties and includes a 2/11/15 letter from Eric Howard, a 2/19/15 letter from Tim Willard. A 2/15/15 letter from Mr. Robertson, a 3/5/15 letter from Tim Willard, a 3/6/15 letter from Rob Witsil, a 3/9/15 letter from Tim Willard, and a 3/19/15 letter from Tim Willard.

The Commission took no action.

Meeting adjourned at 4:41 p.m.